

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.07.2007

CORAM

THE HONOURABLE MR. JUSTICE K. MOHAN RAM

Writ Petition No.10477 of 1998

The Management of
Samson Rubber Industries
Private Limited
3, SIDCO Estate, Ambattur
Chennai 600 098. ...petitioner

Versus

1. The Presiding Officer
Principal Labour Court
Chennai

2.A.Babu ... Respondents

Writ petition filed under Article 226 of Constitution of India praying for issue of a Writ of Certiorarified Mandamus, to call for the records relating to the award in I.D.No.139/1992 dated 21.07.1997 by the first respondent, Principal Labour Court, Chennai and quash the award granting reinstatement with back-wages, continuity of service and attendant benefits to the second respondent and direct the first respondent, Presiding Officer to pass orders upholding the non-employment of the second respondent as justified.

For Petitioner : Mr.D.Vijayakumar

For Respondents : Mr.K.M.Ramesh for R2

ORDER

The short facts necessary for the disposal of the above writ petition are as follows:

The second respondent raised an industrial dispute in I.D.No.139 of 1992 before the first respondent over his non-employment. The case of the second respondent is that though he was doing his work as a permanent worker, since he had joined the workers union and raised a charter of demand, the management dubbing him as an apprentice terminated his services just to victimise him for the trade union activities.

2. The Management/the petitioner in the above writ petition contested the claim of the second respondent contending that the second respondent was an apprentice in the Dropping Section of the Management and he was taken as apprentice only at his own request and on his executing the apprenticeship agreement dated 31.08.1998 and the apprenticeship period was for three years. According to the Management, the second respondent was undergoing training in labeling work and he was paid stipend during the period of apprenticeship and the last drawn stipend was Rs.3000/- per month; Clause (10) of the apprenticeship agreement provides that the training does not constitute any commitment in the regular employment in the company; clause (3) of the Apprenticeship agreement provides that the Management will have the right to terminate the services on completion of the training period of the apprentice and during the period of his apprenticeship also his service can be terminated without assigning any reason. It was further contended by the Management that in pursuance of the contract of apprenticeship Ex.M.1 and Ex.M.4, the Management by order dated 01.04.1991 terminated the services of the second respondent, as the apprenticeship period of the second respondent was over.

3. Before the Labour Court, the second respondent examined himself as WW.1 and marked Exs.W.1 to W.11. On the side of the Management, M.Ws.1 and 2 were examined and Exs.M.1 to M.4 were marked.

4. The labour Court on an elaborate consideration of the oral and documentary evidence adduced before it, came to the conclusion that the second respondent is not an apprentice as contended by the Management, but he is a regular workmen as defined under Section 2(s) of the Industrial Disputes Act and further held that the case of the Management that at the end of three years of apprenticeship period, the services of the second respondent was terminated has not been established and ordered reinstatement of the second respondent with continuity of service and backwages and other attendant benefits. Being aggrieved by that, the management filed the above writ petition.

5. Heard Mr.D.Vijayakumar, learned counsel appearing for the petitioner and Mr.K.M.Ramesh, learned counsel appearing for the second respondent.

6. The learned counsel appearing for the petitioner contended that the Labour Court has not properly considered Ex.M.2, the application of the second respondent for apprenticeship, Ex.M.1, apprenticeship agreement and the oral evidence of the Production Manager, M.W.1 and the Supervisor M.W.2 and has come to an erroneous conclusion that the second respondent is a workman and not an apprentice. The Labour Court instead of relying upon the documentary evidence as contained in Ex.M.1 and Ex.M.2 has erroneously accepted the oral evidence of WW.1 and as such the award of the Labour court is liable to be set aside. Apart from the above said submissions, no other submission was made.

7. Per contra, Mr.K.M.Ramesh, learned counsel appearing for the second respondent submitted that the apprenticeship agreement sought to be relied upon by the Management is not an agreement registered under the Apprentices Act, 1961, and as the agreement had not been registered under the Apprentices Act, the petitioner cannot be termed as an Apprentice and taken away from the definition of workman as contained under Section 2(s) of the Industrial Disputes Act. The learned counsel further submitted that the Management issued the charge memo under Ex.W.3 dated 18.02.1991, alleging that the second respondent abused a co-worker and placed the second respondent under suspension; thereupon the second respondent under Ex.W.5 dated 19.03.1991 sought for subsistence allowance and thereafter, without any domestic enquiry, the management terminated the services of the second respondent by Ex.W.7 dated 01.04.1991, as if the second respondent is only an apprentice and not a workman.

8. The learned counsel for the second respondent further submitted that only to get over the failure on the part of the Management to conduct any domestic enquiry in the manner known to law, the termination order Ex.W.7 had been issued by the Management by ingenuously labeling the second respondent as an apprentice. The learned counsel submitted that in the light of the rival contentions put forth before the labour Court by the second respondent and the management, the Labour Court on an elaborate consideration of the oral and documentary evidence adduced in the case and by applying the correct legal principles has come to the conclusion that as the Apprenticeship Agreement had not been registered under the Apprentices Act, the second respondent cannot be labeled as an Apprentice under Section 18 of the Apprentices Act, but he is only a workman as defined under Section 2(s) of the Industrial Disputes Act. He further contended that when the finding of the Labour Court is based on the appreciation of oral and documentary evidence and when it is not the case of the management that the finding of the Labour Court is in any way perverse, this Court may not interfere with the factual finding in exercise of its power under Article 226 of the Constitution of India.

9. The learned counsel in support of his contentions relied upon a decision of the Division Bench of the Gujarat High Court in *Ballkhan Doskhan Joya vs. Gujarat Electricity Board* reported in (2002(1) LLJ 761). In paragraph-6 of the said decision, it is observed as follows:

"The provisions of Section 18, as held by the learned single Judge, are not attracted in the case of the present appellant, because, for want of registration of his apprenticeship contract, he cannot be treated to be an 'apprentice' undergoing apprenticeship training. 'Apprentice' has been defined under Section 2(aa) to mean "a person who is undergoing apprenticeship training in pursuance of a contract of apprenticeship."

10. The learned counsel also relied on the decision in *Hanuman Prasad Choudhary and others vs. Rajasthan State Electricity Board, Jaipur* reported in (1986(2) LLN 976). In the said decision the learned Judge of the Rajasthan High Court has observed as follows:

"14. Apart from the aforesaid principle of harmonious construction, the conflict between the provisions of S.2(s) of the Industrial Disputes Act and S.18 of the Apprentices Act can also be resolved by applying the principle of statutory interpretation that the operation of a prior general law may be curtailed by a subsequent particular law. The Industrial Disputes Act is a general law applicable to all categories of workmen whereas the Apprentices Act is a particular law enacted with special reference to apprentices. The definition of workman in S.2(s) of the Industrial Disputes Act was enacted in 1956 whereas the Apprentices Act was enacted in 1961. Section 2(s) of the Industrial Disputes Act is thus the prior general law and S.18 of the Apprentices Act is a subsequent particular law. The Provisions of S.18 of the Apprentices Act will, therefore, prevail over the provisions contained in S.2(s) of the Industrial Disputes Act relating to apprentices and an apprentice governed by the Apprentices Act cannot be regarded as a workman under S.2(s) of the Industrial Disputes Act."

11. The learned counsel by relying upon the decision of the Division Bench of the Gujarat High Court and the decision of the High Court of Rajasthan referred to Supra, submitted that the provisions of Section 18 of the Apprentices Act can be invoked to unsuit the claim of the second respondent only if the Apprenticeship agreement is registered under the provisions of the Apprentices Act, but not otherwise. The learned counsel further submitted that all the legal principles have been kept in mind by the Labour Court and have been correctly applied to the facts established in the case and as such this Court may not interfere with the award of the Labour Court. The learned counsel further submitted that as the second respondent is only a workman, as defined under the provisions contained in Section 2(s) of the Industrial Disputes Act, not an Apprentice as the apprenticeship agreement has not been registered under the Apprentices Act 1961, the services of the second respondent can be terminated only by following the mandatory provisions contained in Section 25-F of the Industrial Disputes Act.

12. I have carefully considered the submissions made by either side and the materials available on record and the reasoning of the Labour Court as revealed from the award. A perusal of the award clearly shows that the Labour Court has elaborately considered the evidence of WW.1 and MWs.1 and 2 and the documentary evidence as available from Exs.W.1 to W.11 and Exs.M.1

to M.4. The Labour Court has pointed out that M.W.1 in his cross examination has admitted that the second respondent was not taken as an Apprentice under the Apprentices Act. The Labour Court has also pointed out that the Management has not produced any document to show as to what type of training was given to the second respondent and the same has also been accepted by MW.1. The case of the Management that the second respondent was given training for 900 days for simply labeling the stickers cannot be accepted, as for labeling the stickers, a person does not require 900 days training. The Labour Court has also pointed out that though it is mentioned in Ex.M.2 that the second respondent was entitled to be paid stipend, the Management has not produced any documentary evidence to show that the second respondent was actually paid any stipend. The Labour Court has also considered the admission of W.1. The explanation given by the second respondent that he had to sign in Ex.M.2 only under compulsion due to his poverty had been accepted by the Labour Court. The Labour Court has also pointed out that M.W.1 in his cross examination has admitted that in respect of the charge memo issued to the second respondent, no domestic enquiry was conducted. The Labour Court has also pointed out that in respect of the charges contained in Ex.W.3, the management has not adduced any evidence to prove the same.

13. The Labour Court has also pointed out that the contention of the management is that on the end of the apprenticeship period, the services of the second respondent was terminated, but the document especially Ex.W.3 reveals that the charge memo had been issued against the second respondent and he was placed under suspension and pursuant thereto the second respondent had sought for subsistence allowance under Ex.W.5, and at that stage, the services of the second respondent had been terminated under Ex.W.3. On receipt of Ex.W.3, Order the second respondent had sent a reply Ex.W.10 specifically stating that he is not an apprentice but a workman. But the management has not chosen to send any reply to Ex.W.10. This aspect has been considered by the Labour Court and an adverse inference has been drawn against the management to hold that the second respondent is not an apprentice as contended by the management, but he is only a workman. When the Labour Court, on an elaborate consideration of the evidence available on record has recorded a finding that the second respondent was not an apprentice as contended by the management but only a workman as defined under Section 2(s) of the Industrial Disputes Act and when the learned counsel appearing for the petitioner is not able to point out any perversity in the finding of the Labour Court, this Court is of the considered opinion, that the finding of the Labour Court cannot be interfered with.

14. Admittedly, the Apprenticeship agreement entered between the second respondent and the management had not been registered under the Apprenticeship Act and as such the second respondent cannot be termed as an apprentice as defined under Section 18 of the Apprentices Act, and therefore, the conclusion of the Labour Court that the second respondent is only a workman does not suffer

from any legal infirmity and as such the award of the Labour Court is sustained and the writ petition fails and the same is dismissed. However, there is no order as to costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

ksr

To

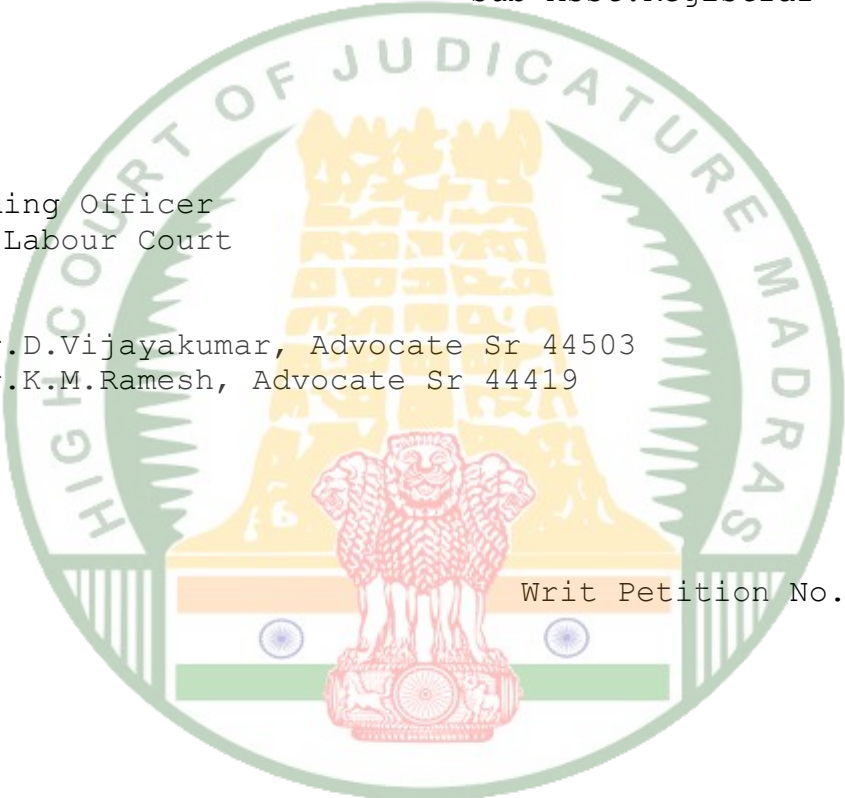
The Presiding Officer
Principal Labour Court
Chennai

+1cc to Mr.D.Vijayakumar, Advocate Sr 44503

+1cc to Mr.K.M.Ramesh, Advocate Sr 44419

MJ (CO)
km/6.8.

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